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**NOV 19 2004**

**OFFICE OF PETITIONS**

In re Application of :  
Wildman, et al. :  
Application No. 10/822,525 : DECISION REFUSING STATUS  
Filed: April 12, 2004 : UNDER 37 CFR 1.47(a)  
Attorney Docket No. 8266-1265 :  
Title: Article Locating and Tracking :  
Apparatus and Method :

This is in response to the petition under 37 CFR 1.47(a), filed November 1, 2004.

The petition under 37 CFR 1.47(a) is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on April 12, 2004, without an executed oath or declaration. Accordingly, on June 23, 2004, the Initial Patent Examination Division mailed applicant a Notice to File Missing Parts of Nonprovisional Application, requiring an executed oath or declaration together with a surcharge for its late filing. This Notice set a two month period for reply.

In reply, applicant filed the instant petition, and paid both the petition fee and the surcharge for late filing of the declaration. To make timely this reply, applicant obtained a two month extension of time and included a Certificate of Mailing dated October 25, 2004.<sup>1</sup> Accompanying the petition was a copy of an e-mail correspondence to support the proposition that diligent effort had been undertaken to locate inventor Fleck. The e-mail stated that unreturned calls had been placed to Fleck's parents' house. In addition, one letter sent to Fleck's last known address was returned as undeliverable.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached after diligent effort or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims, drawings, oath or declaration); (2) an acceptable oath or declaration in compliance with 37 CFR 1.63; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. Rule 47 applicant has not met requirement (1) above.

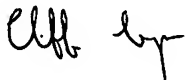
Here, applicant has not demonstrated diligent effort in finding the non-signing inventor. With respect to showing diligent effort, "an affidavit or declaration of facts should be submitted that fully describes the exact facts which are relied on to establish that a diligent effort was made."<sup>2</sup> Applicant has provided no documentary evidence, such as a certified mail return receipt or copies of an internet search, to support such a finding<sup>3</sup>. In fact, a perfunctory internet search by the undersigned has revealed two different addresses for a Thomas M. Fleck in the state of Indiana.

Further correspondence with respect to this matter should be addressed as follows:

By mail:                   Mail Stop Petitions  
                              Commissioner for Patents  
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By FAX:                   (703) 872-9306  
                              Attn: Office of Petitions

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3207.



Cliff Congo  
Petitions Attorney  
Office of Petitions

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<sup>1</sup> October 23<sup>rd</sup> and 24<sup>th</sup> fell on a Saturday and Sunday respectively.  
See 37 CFR 1.7(a)

<sup>2</sup> MPEP 409.03(d) (emphasis added).

<sup>3</sup> Such documentary evidence should be made part of the affidavit or declaration. See id.